

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5557 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DALWADI TARSHIBHAI

DHARAMSHIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR MUKESH PATEL, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/11/98

ORAL JUDGEMENT

1. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the order dated 5/10/1987 passed by the State Government (Annexure-B) and the order dated 31/1/1989 passed by the Competent Authority (Annexure-D

to the petition) under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act'). By the order at Annexure-D to the petition the Competent Authority has declared that the petitioner is entitled to retain 2000 sq. mtrs. of land and 24,180 sq. mtrs. of land has been declared as excess vacant land under the provisions of the Act.

3. The petitioner's challenge is based on the contention that the petitioner's land bearing survey no. 106 situate in village Dhunvav, District Jamnagar is outside the limits of urban agglomeration of Jamnagar city and therefore, the provisions of the Act are not applicable to the land in question and, therefore, there is no question of declaring the said land as excess vacant land under the provisions of the Act. The petitioner has relied upon the certificate issued by Mr. Nitin Raval, Architect, which is at Annexure-H to the petition.

4. In response to the notice issued by this Court Mr. Patel, Ld. A.G.P. appears and submits that the question whether the land in question is within the limits of urban agglomeration of Jamnagar city or not is a question of fact and since the said question was not raised before the authorities, it is not open to the petitioner to raise the same before this Court.

5. In rejoinder, Mr. Raval learned counsel for the petitioner submits that although the aforesaid question may be a question of fact, it is a jurisdictional question, which goes to the root of the matter and therefore, the order passed by the Competent Authority is without jurisdiction.

6. Having heard the learned counsel for the petitioner, this Court is of the view that instead of entertaining this petition and requiring the authorities to file affidavit on the aforesaid factual aspect, it would be better to dispose of the petition with a direction to the Competent Authority to hear the petitioner and to decide the question whether the land in question is within or outside the limits of Jamnagar Urban Agglomeration. It would be for the Competent Authority to hear the petitioner and also consider the material which may be produced before the Competent Authority by the petitioner as well by any other public authority and thereafter to take decision in accordance with law.

Till the Competent Authority takes a decision on

the aforesaid issue parties shall maintain status-quo regarding the land in question.

7. If ultimately the Competent Authority comes to the conclusion that the land is within the limits of Urban Agglomeration of Jamnagar City, nothing further would be required to be done and the orders under challenge shall become operative. However, if ultimately the decision is that the land is outside the limits of Urban Agglomeration, obviously the order would be without jurisdiction and, therefore, the respondents shall revoke the impugned orders and shall not act upon them. In case the ultimate decision is that a part of the land in question is within the Jamnagar Urban Agglomeration and the remaining part is outside it, then the respondents will apply the provisions of the Act only to the portion of the land which is within the Urban Agglomeration. This is too obvious to require any further elaborate discussion. If any authority is required the same is to be found in the decision of this Court in Special Civil Application No. 2821 of 1996 as confirmed in L.P.A. No. 355 of 1997.

8. This petition is accordingly disposed of with a direction to the Competent Authority and Deputy Collector, Urban Land Ceiling, Jamnagar, respondent no. 3 herein, to decide the question whether the land bearing S. No. 106 in village Dhunvav, District Jamnagar is within the limits of the Jamnagar Urban Agglomeration or outside the said limits, within a period of three months from the date of receipt of a copy of this order and to take further action, if any, in light of the forgoing discussion in this judgment.

Rule is made absolute to the aforesaid extent with no order as to costs. D.S.P.

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